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In re Application of :
LOOSEN, Heinz :
Application No.: 09/142,712 :
PCT No.: PCT/EP97/01254 : DECISION ON PETITION
Int. Filing Date: 12 March 1997 :
Priority Date: 12 March 1996 :
Attorney Docket No.: STUR-11 :
For: METHOD OF ROTTING COMPOSTABLE :
MATERIAL :

This is a decision on applicant's "Petition to Vacate Notice of Abandonment," which is being treated as a petition under 37 CFR 1.181, filed in the Patent and Trademark Office (PTO) on 09 January 2001.

BACKGROUND

On 12 March 1997, applicant filed international application no. PCT/EP97/01254 which claimed a priority date of 12 March 1996 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 September 1997. A proper Demand was filed for International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 12 September 1998.

On 10 September 1998, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 07 May 1999, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) indicating that the declaration was not in compliance with 37 CFR 1.66 or 37 CFR 1.68, and that a new oath or declaration in compliance with 37 CFR 1.497(a) and (b) along with a surcharge for providing the oath or declaration later than 30 months from the priority date was required. The notification set a ONE (1) MONTH period for response.

On 06 August 1999, applicant filed "Response to Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office" accompanied, *inter alia*, by: a declaration and power of attorney; the surcharge under 37 CFR 1.492(e); a verified statement claiming small business entity; a preliminary amendment; and a two-month extension of time.

On 22 September 1999, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that oath or declaration executed by the inventor, the \$130.00 surcharge for filing after the thirty-month period, and the English translation of the international application were required. The notification set a ONE (1) MONTH period for response.

On 01 October 1999, applicant filed "Response to Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office" accompanied, inter alia, by: an English translation; a supplemental preliminary amendment; a check in the amount of \$130.

On 15 December 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 22 September 1999 within the time period set therein.

On 09 January 2001, applicant filed the present petition.

DISCUSSION

Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

The identifying data on the card should be so complete as to clearly identify the paper for which receipt is requested. For example, the card should identify the applicant's name(s), serial number, filing date, interference number, etc., and the paper(s) should be identified by specifying the type thereof, namely affidavit, amendment, appeal, components of applications, brief, drawings, fees, motions, supplemental oath or declaration, petition, etc. . . .

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by applicant, title of invention, and the docket number. The receipt identifies the serial/application number as 09/142,712. The receipt itemizes, inter alia: a specification and claims (translation); abstract (translation); supplemental preliminary amendment; express mail certificate; and a check in the amount of \$130. The receipt is stamped "Rec'd. PCT/PTO 01 October 1999" across its face is sufficient to indicate that the translation of the

international application was in fact received in the Office on 01 October 1999.

CONCLUSION

Applicant's petition is **GRANTED**. In view of the receipt of the declaration and power of attorney filed 14 June 1999, which was a timely response to the Notification of Missing Requirements mailed 26 May 1999, the Notification of Abandonment mailed 15 December 2000 was in error and is hereby **VACATED**.

A review of the application papers reveals that applicant completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of 12 March 1997 and a date of **01 October 1999** under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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